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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 500 (JGK)

5 SAMUEL REED,

6 Sentence

7 Defendant.

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8 New York, N.Y.  
9 July 13, 2022  
10 3:15 p.m.

11 Before:

12 HON. JOHN G. KOELTL,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
17 Southern District of New York

SAMUEL RAYMOND

17 Assistant United States Attorney

18 LATHAM & WATKINS LLP

Attorneys for Defendant

19 BY: DOUGLAS YATTER

BENJAMIN NAFTALIS

20 Also Present:

21 Thomas Gergely, Intern USAO

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(Case called; appearances noted)

THE COURT: I've received the presentence report prepared May 3, 2022, revised May 31, 2022. I've received the defense submission dated June 29, 2022, and July 11, 2022. I received the government's submission dated July 6, 2022.

Mr. Yatter, have you reviewed the presentence report, the recommendation, and the addendum, and discussed them with the defendant?

MR. YATTER: We have, your Honor.

THE COURT: Do you have any objections?

MR. YATTER: No, your Honor. We noted objections to the draft report, and they're reflected in the PSR. None of it goes to the guidelines range, so no objections, your Honor, has to take up today.

THE COURT: OK. No factual disputes that I have to decide for purposes of sentence?

MR. YATTER: Correct, your Honor.

THE COURT: I'll listen to you for anything that you would like to tell me in connection with sentence, any statement you'd like to make, anything at all you'd like to tell me.

MR. YATTER: Thank you, your Honor. May I use the lectern?

THE COURT: Sure.

MR. YATTER: Your Honor, before I begin, I would like

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1 to take a moment to introduce some of the people here in the  
2 courtroom today supporting Sam who have come from all over the  
3 country.

4 From Sam's family, his wife Aggie is in the front row.  
5 His mother, Lauren, is sitting next to her. His father and  
6 stepmother, Trace and Barbara, are here. His grandmother,  
7 Beverly, is there. His father-in-law Frank is here. His  
8 brothers-in-law are here, and several of Sam's good friends,  
9 several of whom have submitted letters with our package to your  
10 Honor, are here as well. Each of them is here because they  
11 love and support Sam. I know Sam is grateful for their  
12 support, and I'd like to thank them as well for being here  
13 today.

14 Let me start, your Honor, by saying Sam has admitted  
15 his role in BitMEX's failure to implement a know-your-customer  
16 and anti-money laundering program. He accepts responsibility  
17 for his role in this serious misconduct, and he is deeply  
18 remorseful.

19 The Court has heard recitations of the allegations and  
20 the facts in this case on several occasions, including twice  
21 recently at sentencings for Mr. Reed's codefendants, so I don't  
22 intend to go through all those same points again today. But  
23 instead, we want to focus on who Sam is, where he fits in the  
24 conduct at issue, and how we think those facts should inform  
25 the Court's sentence.

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1 I've had the pleasure of getting to know Sam well over  
2 the past few years, and I'm proud to represent him here today,  
3 as is my team. He's a remarkable individual. He is genuine,  
4 he is humble, and he is kind. And he has developed a maturity  
5 beyond his years.

6 He also possesses an incredible intellectual  
7 curiosity. As my team will attest, it is not often that you  
8 meet with Sam and come away without learning something new on a  
9 topic or in a field that you never expected to discuss. But  
10 there are two topics that always come up with Sam, and it is  
11 clear when he's speaking about them that they are his passions.  
12 Those are his family and computer science. I'd like to speak  
13 briefly about each of those areas.

14 As the number of people in this courtroom and the  
15 letters submitted for Sam show, he is a dedicated and loyal  
16 family member and friend. He is a devoted husband and father,  
17 a proud brother, son, uncle, brother-in-law to the many family  
18 members here today and around the country in Massachusetts,  
19 Wisconsin, and elsewhere. He's also a caring and committed  
20 friend.

21 Although Sam worked hard and found success in his  
22 career, his loved ones always came first. Rather than stay in  
23 Hong Kong with his cofounders, Sam coded for the BitMEX website  
24 while traveling with his wife and then from Wisconsin where the  
25 couple moved to be near Sam's family. Later, as they started

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1 their family and had their first child, they moved to  
2 Massachusetts to be near Sam's wife's family. I think that's a  
3 testament to Sam's character and his personality. From the  
4 beginning, he opted for small-town family life over the  
5 trappings of the high-profile cryptocurrency world, unlike his  
6 cofounders and unlike many in the industry. He chose to work  
7 from a coworking space in Milwaukee and a home office in  
8 Massachusetts instead of a fancy high-rise in Hong Kong so he  
9 could be near his loved ones.

10 Sam has always been generous, not only with his money  
11 but also with his time and his attention. As we noted in our  
12 submission, Sam has used his money to support others,  
13 particularly in the area of education, which is near and dear  
14 to his heart. But he's not someone who does good deeds only  
15 with a checkbook. As your Honor knows from our submission,  
16 Sam's friends have described how he has given his time to help  
17 them in their professional and personal lives. One of Sam's  
18 friends recalled how Sam flew in to visit her for a weekend  
19 when she was ill, and she described how he not only spent time  
20 with her but helped her do chores and cleaned her home because  
21 she was unable to do so. As she said, and this is in the file  
22 your Honor has, that is who Sam is, a man who is genuine, a man  
23 who cares, who shuns pretentiousness and remains the solid  
24 friend you've always relied on.

25 I think that describes Sam well. He is the

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1 down-to-earth, shirt-off-his-back type of guy. That was true  
2 when he was growing up in Wisconsin, and it did not change when  
3 he found success.

4 I'd also like to talk briefly about Sam's passion for  
5 computers and computer science. He fell in love with computers  
6 as a young boy, tinkering with machines that his father, who's  
7 here with us today, brought home from work. That love stayed  
8 with Sam ever since, and it led him to develop exceptional  
9 computer programming skills. I mentioned before that Sam is  
10 intellectually curious, and nowhere is that more obvious than  
11 in discussing computers and technology with him. He takes  
12 immense pride in his field of work and is always seeking to  
13 grow, learn, and be the best he can be.

14 He has dedicated himself to programming ever since he  
15 was old enough to work. In middle school, he fixed neighbors'  
16 computers. In high school, he set up a corporate network for  
17 an industrial company in his hometown. In college, at the  
18 worked at the student IT help desk. After college, he started  
19 out as a programmer for a U.S. Army defense contractor and then  
20 had several jobs as an engineer for various companies in  
21 Washington and then in Hong Kong.

22 I'll talk in a moment about how that background led to  
23 Sam's role at BitMEX, but before I do, I also want to note that  
24 Sam has given an enormous amount to the programming community.  
25 As we noted in our submission, Sam has been one of the most

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1     prolific open source programmers in the world, as measured by  
2     GitHub, an industry-leading code repository. "Open source"  
3     means Sam's work is public and free. He is adding to the  
4     world's library of programming knowledge, and he's doing so at  
5     an exceptionally prolific rate.

6             He also gives back to programmers more directly. At  
7     his urging, BitMEX leads the industry in support for open  
8     source developers, and as the letters attached to our  
9     submission show, Sam was always willing to help those around  
10    him grow as coders and help solve problems in their coding.

11            As another of Sam's friends in a letter you have, your  
12    Honor, recounted, he met Sam in a coworking space years ago and  
13    recalled that Sam regularly devoted time to help new and old  
14    members with their technology problems. This friend added that  
15    half the software and hardware at the coworking space only  
16    worked because Sam took the time to figure it out. In short,  
17    Sam was not only a guy who preferred low-key coworking spaces  
18    to high-rise offices, but he was the guy there helping others  
19    to succeed.

20            Now, while I don't want to repeat everything we've  
21    written to your Honor, I do want to highlight a few points. As  
22    your Honor knows, this is not a fraud case. This is not a case  
23    with any victims. No one lost any money. While this case is  
24    about anti-money laundering compliance, it is not a case about  
25    money laundering. There is no specified unlawful activity on

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1 the platform or use of the platform to hide or move proceeds of  
2 any illegal activity, and certainly not any evidence that Sam  
3 knew about or condoned such activity. The government cites to  
4 suspicion and inquiries in their papers, little or none of  
5 which is actually tied to Sam. But more importantly, there is  
6 a material difference between what might have happened and what  
7 actually happened.

8 We laid out in our submission why BitMEX was not a  
9 platform that would be attractive to a money launderer, and  
10 we're speaking here from Sam's perspective. It was a  
11 bitcoin-only platform that did not allow bitcoin to be changed  
12 or converted into any other currency, and it used unique wallet  
13 addresses that marked transactions on the public blockchain  
14 visibly and for all time. No other exchange does this even  
15 today, and BitMEX remains the most traceable group of addresses  
16 on any blockchain.

17 To be clear, this does not excuse the failure to have  
18 a BSA-compliant AML program, but it does provide important  
19 context for how Sam thought about the platform.

20 I make these points because a lot of what's in the  
21 government's sentencing arguments are supported by generalities  
22 or points that are not tied to Sam, and that matters because  
23 today we are talking about Sam. That brings me to Sam's role  
24 in the conduct at issue.

25 Sam has pleaded guilty to one count of violating the



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1 BSA for willfully causing BitMEX to fail to implement an  
2 adequate AML program. He has fully accepted responsibility for  
3 that offense and is deeply remorseful for the bad judgment in  
4 not ensuring that BitMEX have a program like this.

5 But, importantly, all parties agree that Sam's role in  
6 the offense is different and more limited than the role his  
7 cofounders played. The government does not dispute that, and  
8 it's the reason why the guidelines range in Sam's plea  
9 agreement is in a lower zone and for a shorter period than his  
10 codefendants.

11 Now I want to talk briefly about that more limited  
12 role.

13 Before BitMEX, Sam had never worked in the financial  
14 industry at all, and he had no experience in finance or in  
15 compliance. When Arthur Hayes first described the project to  
16 him in 2013, Sam did not even know what financial derivatives  
17 were. The division of labor among the founders reflected that.  
18 Sam was responsible for the front-end programming, and he left  
19 the rest -- corporate strategy, business development,  
20 marketing, compliance, and legal -- to his more experienced  
21 cofounders. Sam was also on the other side of the world from  
22 them and only saw them in person for a few weeks a year.

23 It's also important to note that Sam's area of  
24 responsibility for him was all consuming. When the company's  
25 business took off and its product offerings and services

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1 expanded, Sam faced exponential technological demands to  
2 maintain and support the website and API in a secure manner.  
3 Sam was so burned out from the never-ending work that in 2018,  
4 as your Honor knows, he opted to go on a six-month sabbatical.  
5 So from September 2018 to February 2019, he had no involvement  
6 in the company's day-to-day operations, and when he returned in  
7 2019, it was in a more limited role which he could then do  
8 because the company had hired other coders and professionals as  
9 a group.

10           Given Sam's limited role and the lack of financial  
11 experience, the PSR and the government both recognize that Sam  
12 was not an organizer, not a leader of the company's failure to  
13 have an AML program. That's why no leadership enhancement  
14 applies for Sam. That's a meaningful difference, and it's  
15 based on meaningful factual distinctions. Respectfully, your  
16 Honor, we believe it also warrants a meaningfully different  
17 sentence.

18           Now, the government acknowledges that Sam was not  
19 responsible as a leader, that he is less culpable, and that he  
20 merits a lesser sentence, but the lesser sentence they  
21 recommend is, in fact, very similar to Mr. Delo. Mr. Delo  
22 received 30 months of probation, and the government recommends  
23 24 months of probation for Sam. Mr. Hayes also received 24  
24 months of probation, of course with six months of home  
25 confinement that no one is seeking here today.

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1           The government's basis for its recommendation today is  
2           that Sam was a co-founder, earned a lot of money, and is a  
3           technologist who they allege was uniquely situated to restrict  
4           U.S. customers. Now, I'm summarizing and condensing, but I  
5           want to speak briefly about each of those three points.

6           Respectfully, none of those arguments supports the  
7           government's recommended sentence.

8           First, there is no dispute that Sam was a co-founder,  
9           but the title should not impact the sentence. What matters is  
10          what his role was, and as we've discussed, his role was focused  
11          on front-end technology and not the compliance decisions at the  
12          heart of this criminal failure.

13          Second, the wealth he earned from the company should  
14          not drive this sentence. BitMEX operated lawfully in  
15          jurisdictions outside the United States, and it offered  
16          innovative products that have played an important role in the  
17          growth and maturation of the global cryptocurrency markets.  
18          Moreover, the \$10 million fine Sam already paid in connection  
19          with his plea agreement vastly exceeds the recommended fine  
20          under the guidelines by several orders of magnitude. That  
21          stipulated fine was structured by the government to be based on  
22          the gains Sam earned from BitMEX even though it was not based  
23          on data. In other words, to the extent Sam's earnings are  
24          relevant at all, they have been addressed through a fine that  
25          far exceeds the guidelines recommendation.

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1 Third, the fact that Sam is an excellent computer  
2 programmer does not render him more culpable or justify the  
3 government's requested period of probation. Having never  
4 worked in financial services or compliance before, Sam helped  
5 implement controls based on guidance he received from others.  
6 Sam has admitted that the steps the company took to limit  
7 access by U.S. users were insufficient, and he deeply regrets  
8 those deficiencies. But even the government acknowledges that  
9 Sam did not organize or lead those compliance decisions, and  
10 the measures he helped implement were not a sham, as the  
11 government contends. They succeeded in blocking tens of  
12 thousands of potential U.S. users, and they got better over  
13 time.

14 The government points to things like VPNs and Tor as  
15 supposed loopholes for these controls, but our submission lays  
16 out how those arguments, respectfully, misunderstand the  
17 technology and the facts. Those are issues that plague every  
18 Internet-based company, including companies with far greater  
19 resources and staffing than BitMEX had. And Sam repeatedly  
20 himself told users that their accounts would be shut down if  
21 they were found to be using that technology to circumvent the  
22 company's controls.

23 At bottom, because of the nature of the Internet and  
24 technologies like VPNs, the government's argument is really  
25 that the company needed to have a comprehensive KYC program,

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1 KYC procedures, earlier than it did. Now, the company chose to  
2 and started developing KYC beginning in 2019, announced it  
3 publicly in 2020 before the indictment, before any enforcement  
4 action, and then finished implementing it at great expense and  
5 cost and did that following through after the indictment, of  
6 course.

7 The lack of such procedures earlier, prior to the  
8 beginning of that period in 2019 and 2020 when they began  
9 implementing it, the lack of such procedures, which Sam has  
10 acknowledged, is not a coding problem that his programming  
11 skill could solve. It was a compliance decision for which Sam  
12 accepts his part of the responsibility, but for which he was  
13 not a leader or organizer. That is a core part of the  
14 difference reflected in Sam's plea agreement.

15 So where does that bring us? As detailed in our  
16 submission, we respectfully request that the Court sentence Sam  
17 to time served with no period of supervised release. As set  
18 forth in our submission in some detail, that's the sentence  
19 that would be no greater than necessary to satisfy the factors  
20 under Section 3553(a)(2).

21 I won't go through them again today. I'll just  
22 commend your Honor to our written submission, but we would also  
23 note that supervised release as a component is not required by  
24 the guidelines here. Under 5D1.1(a) supervised release is only  
25 mandatory where it's specifically required by statute or where

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1 a term of more than one year of imprisonment is imposed, and  
2 neither condition would apply here.

3 Now, it's also worth noting that despite Sam's lesser  
4 role in the offense, he has been subject to the most  
5 restrictive pretrial conditions of any of the three founders.  
6 Since his arrest in October 2020, Sam has been limited to  
7 travel in a small number of states in the U.S. As your Honor  
8 knows from our occasional requests, Mr. Reed needed to seek  
9 consent from the government to travel to any other states. He  
10 also could not leave the country because he had to surrender  
11 his passport to the government, which it still holds. At the  
12 same time, Mr. Hayes and Mr. Delo were allowed to travel freely  
13 throughout their home countries and, in the case of Mr. Delo,  
14 in certain other countries as well. This has been the  
15 situation for more than 21 months, and Sam's compliance has  
16 been exemplary. It further underscores why no additional  
17 period of probation or supervised release is necessary for Sam.

18 So for all of these reasons, we respectfully request a  
19 sentence of time served with no period of supervised release.

20 I do want to add, your Honor, as the government is  
21 seeking probation, that if the Court determines to impose a  
22 sentence of probation, we would make just a couple of points:  
23 First, if probation is ordered, we respectfully request and  
24 submit that it should stand alone and, of course, not include  
25 any time served or supervised release component. Probation

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1 alone would be more than sufficient, as both the PSR and the  
2 government have recommended. And, second, a probationary  
3 sentence should be for the shortest period possible.

4 For all the reasons we've discussed, Sam's lesser role  
5 warrants a meaningful distinction in sentences. Mr. Delo  
6 received 30 months of probation, and Mr. Hayes received 24  
7 months of probation. Under the guidelines, one year of  
8 probation would appropriately reflect the difference in Sam's  
9 role if the Court is imposing a sentence of probation. Two  
10 years, as the government seeks, we submit would not. So  
11 respectfully, your Honor, if the Court is inclined to order  
12 probation, we would ask for a one-year period with no time  
13 served or supervised release component.

14 Just to conclude briefly, your Honor, there are a  
15 couple of additional points to mention.

16 To the extent the Court determines that a period of  
17 either supervised release or probation is warranted, we  
18 respectfully request that the conditions for Mr. Reed be  
19 consistent with the terms of probation ordered for his  
20 codefendants. So like his codefendants, Mr. Reed should not be  
21 subject to any limitations on domestic or international travel.  
22 I think the government has agreed to that, your Honor, in their  
23 submission. Also should be allowed to maintain contact with  
24 Mr. Hayes and Mr. Delo as they have been allowed to maintain  
25 contact with him, and in all other respects should be similar

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1 to the conditions for them as well.

2           Finally, the PSR included a couple of -- two special  
3 conditions that we respectfully submit should not be imposed.  
4 The PSR recommended a search condition based on the defendant's  
5 criminal conduct, including "fraudulent activity," and second,  
6 financial restrictions and disclosure conditions to monitor the  
7 defendant's repayment of financial obligations and also to  
8 deter the defendant from committing a new offense. These were  
9 not conditions imposed on Mr. Hayes or Mr. Delo. Mr. Reed  
10 actually has not been accused of any fraud. There's no fraud  
11 at issue, and he's already satisfied his \$10 million fine in  
12 full. So we would respectfully request that those be set  
13 aside.

14           With that, your Honor, even though I know you will  
15 tell me it's not necessary, on behalf of Mr. Reed and my team,  
16 we would like to thank you and the court and staff for your  
17 time and your consideration throughout this case.

18           THE COURT: All right.

19           MR. YATTER: Thank you, your Honor.

20           THE COURT: Thank you.

21           Mr. Reed, have you reviewed the presentence report,  
22 the recommendation, and the addendum, and discussed them with  
23 your lawyers?

24           THE DEFENDANT: Yes, your Honor.

25           THE COURT: Do you have any objections?



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1 THE DEFENDANT: No, your Honor.

2 THE COURT: I'll listen to you for anything you would  
3 like to tell me in connection with sentence, any statement  
4 you'd like to make, anything at all you'd like to tell me.

5 THE DEFENDANT: Thank you, your Honor.

6 THE COURT: You can remain seated. Talk into the  
7 microphone.

8 THE DEFENDANT: OK. Appreciate that.

9 Thank you, your Honor. Appreciate the opportunity to  
10 address the Court.

11 As Mr. Yatter said, I take full responsibility for my  
12 role in BitMEX's failure to implement a know-your-customer and  
13 anti-money laundering program. When I cofounded BitMEX in Hong  
14 Kong, I was young. I was coming off a few unsuccessful  
15 startups and trying to find my identity. And two of the most  
16 talented people I have ever known wanted to work together on a  
17 unique idea in a brand-new space, and obviously I went for it.

18 For years we operated with very little resources and  
19 very little success. When the success suddenly came, the  
20 stress was unbelievable. I wasn't prepared for it. My coping  
21 mechanism was compartmentalization. I -- when I felt out of my  
22 depth, I would simply focus on writing code. I tried to narrow  
23 my responsibilities so that they would be small enough for me  
24 to get my arms around them. Then in doing so, I was complicit  
25 in our failures.

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1           This was a mistake. We didn't do enough to ensure  
2           that we were not serving U.S. customers, and the result of that  
3           has been clear. It's why we're all here today. I deeply  
4           regret this mistake. Not only was it wrong, but it's had an  
5           enormous effect on others, including my business, my family,  
6           and my friends. This head-on experience of the seriousness of  
7           my actions has led me to reduce my relationship with the  
8           business and focus on my growing family, which has been my top  
9           priority all along.

10           I want to thank my wife for being so strong and  
11           supportive through all of this. She is everything to me, as is  
12           my family and her family, most of whom are there behind me,  
13           just this remarkable collection of my family and friends. So  
14           many of the people here took so much time flying and driving  
15           and being here for me, just to support me, and it's painful for  
16           them to see me like this, see this situation, but I deeply  
17           appreciate them coming.

18           I just wanted to thank you, your Honor, and the court  
19           for attention to my case, and I hope that you'll see fit to  
20           impose a sentence that allows me to turn the page on this  
21           chapter in my life and move on and focus on my family.

22           Thank you, your Honor.

23           THE COURT: Thank you, Mr. Reed.

24           Mr. Raymond, has the government reviewed the  
25           presentence report, the recommendation, and the addendum?

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1 MR. RAYMOND: Yes, your Honor.

2 THE COURT: Does the government have any objections?

3 MR. RAYMOND: No, your Honor.

4 THE COURT: I'll listen to you for anything that the  
5 government wishes to tell me in connection with sentence.

6 MR. RAYMOND: Thank you very much, your Honor.

7 I don't want to reiterate too many points made in our  
8 submission, but briefly, your Honor, the government  
9 respectfully recommends the sentence recommended by probation  
10 in the PSR, which is two years' probation.

11 A sentence with some form of supervision is  
12 appropriate in this case. The points I'd like to highlight,  
13 your Honor, are, first, the seriousness of the offense. As  
14 your Honor knows, this was a yearlong criminal offense by  
15 Mr. Reed and by BitMEX. The government does not dispute, as  
16 Mr. Yatter said, that Mr. Reed was not as culpable. He was not  
17 a leader in the criminal conduct. However, as a 30 percent  
18 owner, he still had the ability to make the decision about  
19 whether or not to implement an AML and KYC program.

20 Mr. Yatter mentioned the resources, that BitMEX in  
21 some sense lacked the resources to implement such a program or  
22 to strengthen its controls. As your Honor knows, as your Honor  
23 can see in the PSR, that statement just is not logical in light  
24 of the amount of money the defendant himself and his  
25 codefendants earned from this company. As briefed in some

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1 detail with respect to Mr. Hayes' sentencing, the company was  
2 highly profitable by late 2017, early 2018 when they could have  
3 made the decision, when Mr. Reed could have made the decision  
4 to use some of the great resources that they were earning to  
5 adopt appropriate controls, including a compliant KYC and AML  
6 program.

7 With respect to Mr. Reed's own role, he did have the  
8 technical ability to strengthen the controls. There's some  
9 discussion about VPNs and Tor. Your Honor, what the important  
10 point that the government respectfully requests that the Court  
11 consider is that while Mr. Reed stated to customers sometimes  
12 not to use VPNs, he knew that they were doing so, and as  
13 previously briefed for his codefendants, there were means that  
14 the defendant could have implemented to restrict  
15 technologically to restrict the use of VPNs on BitMEX.

16 Your Honor, the other point I'd like to highlight is  
17 the need for the sentence imposed to reflect respect for the  
18 law. First, as your Honor knows, this was a willful violation  
19 of the Bank Secrecy Act, so it showed deep disrespect towards  
20 U.S. law. Second, Mr. Yatter mentioned that Mr. Reed had an  
21 understanding that some of BitMEX's technological features made  
22 it less attractive as an actual source for money laundering.  
23 As we point out in our submission, your Honor, that is belied  
24 or his understanding of that would be belied by the quantum of  
25 regulatory inquiries BitMEX was receiving, many of which he was

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1 included on, which showed that, despite his own understanding  
2 based on the technology, regulators were interested because  
3 there were allegations and investigations into criminal conduct  
4 by users of BitMEX.

5 Finally, your Honor, I just want to end on the point  
6 about a disparity between Mr. Reed and his codefendants. There  
7 is no question a sentence of 24 months' probation would be a  
8 disparate sentence from that imposed on either Mr. Hayes or  
9 Mr. Delo. That sentence, a sentence of some form of  
10 supervision, reflects Mr. Reed's important role in the company  
11 while also reflecting the fact that he was less culpable than  
12 Mr. Hayes or Delo.

13 With respect to Mr. Reed's prior compliance on bail,  
14 as your Honor knows, the relevant factors on bail under 3142  
15 and the Bail Reform Act are different than the applicable  
16 factors under the law under 3553(a). Now that Mr. Reed has  
17 been convicted, pleading guilty, and the Court is considering  
18 imposing sentence, the appropriate conditions are those of  
19 3553(a), and those should reflect the seriousness of the  
20 offense, the need to reflect respect for the law, as well as  
21 specific and general deterrence.

22 Thank you, your Honor.

23 THE COURT: Thank you, Mr. Raymond.

24 I'll place the presentence report, the recommendation,  
25 and the addendum in the record under seal. I'll also place the

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1 parties' submissions to me in the record under seal. The  
2 parties should place their own submissions in the record not  
3 under seal after redacting any personal identifying  
4 information.

5 I adopt the findings of fact in the presentence  
6 report. Therefore, I conclude that under the current  
7 guidelines, the total offense level is six, the criminal  
8 history category is I, and the guideline sentencing range is  
9 zero to six months.

10 I appreciate that the guidelines are only advisory and  
11 that the Court must consider the various sentencing factors in  
12 18 U.S.C. Section 3553(a) and impose a sentence that is  
13 sufficient, but no greater than necessary, to comply with the  
14 purposes set forth in Section 3553(a)(2).

15 In this case, the defendant's guideline sentencing  
16 range is in Zone A, and therefore, a sentence consistent with  
17 the guidelines is a sentence of probation without a sentence of  
18 home confinement for part of the sentence of probation. The  
19 probation department recommends a sentence of two years'  
20 probation, and the government agrees. The defense urges that  
21 the defendant should be sentenced simply to time served,  
22 without any other period of supervision.

23 But as with the codefendants, the Court agrees that  
24 the offense is very serious. The defendant was a 30 percent  
25 owner of BitMEX and, along with his codefendants, admittedly

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1 caused the company to violate the Bank Secrecy Act by failing  
2 to establish anti-money laundering and know-your-customer  
3 procedures. As the defendant necessarily admitted for purposes  
4 of his plea of guilty to a willful offense, the defendant knew  
5 that it was necessary for the company not to serve United  
6 States customers in order to avoid the regulatory procedures of  
7 the Bank Secrecy Act, but he knew that his company, in fact,  
8 serviced United States customers. Given the admittedly willful  
9 nature of the violation, the crime was serious.

10 On the other hand, as the Court made clear with  
11 respect to the codefendants, the government chose not to accuse  
12 the defendant of money laundering or fraud and was well aware  
13 of, or should have been aware of, the guideline range at the  
14 time that it entered into the plea agreement with the  
15 defendant. Moreover, there are no identifiable victims of the  
16 offense and no need for restitution. There has been  
17 disgorgement as a result of the defendant's payment of the  
18 \$10 million penalty to the CFTC. The penalty also satisfies  
19 the fine in this case.

20 The history and characteristics of the defendant also  
21 weigh in the defendant's favor. This is the defendant's first  
22 offense, and he has a large and supportive family and a history  
23 of charitable contributions.

24 There is a need to avoid unwarranted sentencing  
25 disparities. In comparing the defendant's possible sentence to

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1 those imposed on his codefendants, the defendant appears to be  
2 somewhat less culpable. The defendant did not have a  
3 day-to-day supervisory role over the BitMEX employees who  
4 continued to carry out the failure to implement the anti-money  
5 laundering program. And while the defendant had a supervisory  
6 role within BitMEX, it was not a supervisory role in connection  
7 with the criminal activity. See generally Presentence Report,  
8 paragraph 57.

9 The government agrees that the defendant is somewhat  
10 less culpable than his two codefendants, as reflected in the  
11 fact that the stipulated guideline sentencing range for the  
12 defendant is in Zone A of the guidelines rather than Zone B for  
13 his codefendants. Therefore, the Court agrees that a sentence  
14 that is somewhat less than the sentences of his codefendants  
15 would avoid unwarranted sentencing disparities.

16 Therefore, on balance, the Court intends to impose a  
17 sentence of 18 months' probation without a condition of home  
18 confinement. Probation will be subject to the mandatory and  
19 special conditions of supervision listed on pages 44 and 45 of  
20 the presentence report. The defendant must cooperate in the  
21 collection of DNA as directed by the probation officer. The  
22 court will not impose the drug testing condition because the  
23 defendant is a low risk of substance abuse. The Court will  
24 also not impose the special condition suggested by the  
25 probation department at pages 45 and 46 of the presentence



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1 report. There is no need for a search condition or the  
2 financial conditions on page 46 in view of the fact that the  
3 defendant has already paid his \$10 million fine. Moreover, the  
4 defendant will be permitted domestic and international travel  
5 and will be permitted to have contact with Messrs. Hayes and  
6 Delo.

7 The defendant's obligation to pay a \$10 million fine  
8 has been satisfied by his payment of the \$10 million penalty to  
9 the CFTC. The defendant must pay a special assessment of \$100.  
10 The Court will not impose restitution because there is no  
11 victim under 18 U.S.C. Section 3663. No forfeiture is sought.

12 The sentence is consistent with the factors in  
13 Section 3553(a) and is sufficient, but no greater than  
14 necessary, to comply with the purposes set forth in  
15 Section 3553(a)(2).

16 I have explained the reasons for the sentence. Before  
17 I actually impose the sentence, Mr. Yatter, I'll recognize you  
18 for anything you wish to tell me.

19 MR. YATTER: Thank you, your Honor.

20 Just as an administrative matter, apart from what  
21 you've just said, we'd ask also that pretrial be directed to  
22 return Mr. Reed's passport to him and that his \$500,000 payment  
23 to secure his appearance bond also be ordered to be returned to  
24 him.

25 THE COURT: Usually I do those in response to a

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1 separate request. If you send me a letter, I'll endorse the  
2 letter.

3 MR. YATTER: We're happy to do that, your Honor.  
4 Thank you.

5 THE COURT: OK.

6 MR. YATTER: Nothing further. Thank you, your Honor.

7 THE COURT: Mr. Reed, before I actually impose the  
8 sentence, I'll recognize you for anything you wish to tell me,  
9 anything you'd like to say, anything at all.

10 THE DEFENDANT: Nothing further, your Honor.

11 THE COURT: Mr. Raymond, before I actually impose the  
12 sentence, I'll recognize you for anything the government wishes  
13 to tell me.

14 MR. RAYMOND: Nothing further, your Honor.

15 THE COURT: All right. Pursuant to the sentencing  
16 Reform Act of 1984, it is the judgment that the defendant,  
17 Samuel Reed, is hereby sentenced to 18 months' probation on  
18 Count One.

19 Within 72 hours, the defendant shall report in person  
20 to the probation office in this district. While on probation,  
21 the defendant shall comply with the mandatory, standard  
22 conditions, and special conditions of probation in this  
23 district as listed on pages 44 to 45 of the presentence report.

24 The drug testing condition is suspended. The  
25 defendant must cooperate in the collection of DNA. Domestic

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1 and international travel is permitted. And the defendant is  
2 permitted to have contact with Messrs. Hayes and Delo.

3 As I've indicated before, I will not impose the search  
4 condition on page 45 or the financial conditions on page 46  
5 with respect to providing the probation officer access to any  
6 requested financial information and that the defendant must not  
7 incur new credit charges. Those will not be imposed.

8 It is further ordered that the defendant shall pay to  
9 the United States a special assessment of \$100, which shall be  
10 due immediately.

11 I've already explained the reasons for the sentence.  
12 Does either counsel know of any legal reason why the sentence  
13 should not be imposed as I so stated it?

14 MR. RAYMOND: No, your Honor.

15 MR. YATTER: No, your Honor.

16 THE COURT: All right. I'll order the sentence to be  
17 imposed as I have so stated it.

18 There's a waiver of the right to appeal the sentence,  
19 correct?

20 MR. RAYMOND: Yes, your Honor.

21 THE COURT: Does either counsel know of any legal  
22 reason why the waiver is not effective?

23 MR. RAYMOND: Not from the government.

24 MR. YATTER: No, your Honor.

25 THE COURT: All right. Mr. Reed, the reason that I

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1 ask these questions is that generally a defendant has the right  
2 to appeal the sentence. The notice of appeal must be filed  
3 within 14 days after the entry of the judgment of conviction.  
4 The judgment of conviction is entered promptly after the judge  
5 announces the sentence. If the defendant cannot pay the cost  
6 of appeal, the defendant has the right to apply for leave to  
7 appeal *in forma pauperis*. If the defendant requests, the clerk  
8 will prepare and file a notice of appeal on the defendant's  
9 behalf immediately, and the rules require that a judge inform a  
10 defendant of this right to appeal.

11 In this case, the parties advise that you have given  
12 up, or waived, your right to appeal the sentence, and I'm  
13 confident that when I took your guilty plea, I went over with  
14 you the waiver of this right to appeal the sentence. So it  
15 appears that you have given up, or waived, your right to appeal  
16 the sentence, but I go over this with you now because I want to  
17 make sure that you talked to your lawyers about this so that  
18 you are fully informed of all of your rights.

19 Do you understand what I've said?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: All right. Government moves to dismiss  
22 any open counts?

23 MR. RAYMOND: That's right, your Honor. That's the S1  
24 indictment entirely and Count Two of the original indictment.

25 THE COURT: You move to dismiss all of those?

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1 MR. RAYMOND: Yes, your Honor.

2 THE COURT: And the defense agrees?

3 MR. YATTER: Yes, your Honor.

4 THE COURT: All open counts, including the previous  
5 indictment, dismissed on the motion of the government.

6 All right. Anything further?

7 MR. RAYMOND: Not from the government, your Honor.

8 MR. YATTER: Nothing here, your Honor. Thank you.

9 THE COURT: Good afternoon, all.

10 MR. RAYMOND: Good afternoon.

11 MR. YATTER: Good afternoon.

12 (Adjourned)

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